

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Review –)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
Of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
To: The Commission, <i>en banc</i>		

**COMMENTS OF
AMERICAN ASSOCIATION OF PAGING CARRIERS
ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully submits its comments in the captioned proceedings to the Federal Communications Commission, in response to the Commission's Report and Order and Second Further Notice of

Proposed Rulemaking (SFNPR), FCC 02-329, adopted December 12, 2002, released December 13, 2002, and published at 67 Fed. Reg. 79543 (December 30, 2002). As its comments in response to the SFNPR, AAPC respectfully states:

Background

In the Report and Order portion of the SFNPR, the Commission made certain modifications in the way Universal Service Fund (USF) contributions are calculated beginning with the Form 499Q Report due on February 1, 2003. Most notably, in this regard, although the Commission adhered to the previous revenue-based methodology and declined to adopt a connection-based system, it did require contributions to be based on quarterly forecasts of revenues rather than historical data. While the Commission believes these changes improve the contribution methodology in the near term, it remains concerned that a revenue-based system may not be the best alternative to ensure the long-term viability of the USF as the telecommunications marketplace evolves over the next several years.

Accordingly, the Commission instituted additional rulemaking proceedings to consider what further changes, if any, should be made in the contribution structure. Among the questions posed are whether paging carriers are able to determine their actual interstate end-user telecommunications revenues and whether the “safe harbor” of 12% for paging carriers should be abolished. Additionally, the Commission has requested comments on three alternative connection-based contribution proposals: (1) pure connection-based contributions; (2) contributions split between access and transport providers; and (3) contributions based on telephone number assignments.

Comments on the SFNPR were initially to be filed by January 29, 2003. However, on January 24, 2003, the Commission extended the deadline for comments until February 28, 2003, and the deadline for reply comments until April 18, 2003. Additionally, on February 26, 2003,

the Commission released a staff study projecting the financial impact over the next several years of the three contribution methodologies designated for comment in the SFNPR. The Commission requested comments on the staff study by March 31, 2003, and reply comments by April 18, 2003, contemporaneously with the reply comments in response to the SFNPR.

AAPC is a newly organized national trade association representing the interests of paging carriers throughout the United States. AAPC officially organized and commenced operation at its first annual meeting at Myrtle Beach, South Carolina, on May 31, 2002; and since that time it has actively participated in proceedings before the Commission affecting the paging industry. Additional information concerning AAPC may be found at its web site www.pagingcarriers.org.

Summary of Position

AAPC's position, in summary, is that the three proposals set for comment are all materially defective as applied to the paging industry and should not be adopted. All three would impose additional reporting requirements on the paging industry relating to the USF, without relieving the industry of any of its existing reporting burdens. It is impossible to understand how additional reporting burdens can be justified when the end objective should be revenue neutrality and "equitable and nondiscriminatory" treatment for the paging industry.

Moreover, there is no basis in law or industry developments for *increasing* the relative USF contribution by the paging industry *vis-à-vis* other industry segments. Mischievously, however, that appears to be what will happen under all three of the proposals. Similarly, there is no justification whatsoever for abolishing the existing "safe harbor" of 12% for paging service, as suggested in the SFNPR or for eliminating the *de minimis* exemption from contributions.

At bottom, AAPC is concerned that the Commission may be laboring under the false premise that it must impose *either* a revenue-based contribution methodology *or* a connection-based methodology across the board on all industry segments, regardless of whether there is any

benefit in doing so. However, the Commission uses different contribution methods for assessing annual regulatory fees, including such variations as percentage of revenues, per-unit charges and per call sign charges; and there is no inherent reason why similar variations cannot be used for USF contributions as appropriate.

Therefore, if a good reason exists to adopt a connection-based contribution methodology for the wireline based services, that fact does not, *ipso facto*, justify imposing the same regimen on other industry segments where no change has been justified. In the case of the paging industry, the proposals set forth for comment are not an improvement over the existing system and thus should not be adopted.

Comments on Second Further Notice

1. The “Safe Harbor” and *De Minimis* Exemption Should Be Retained for the Paging Industry

As a prelude to its outline of the connection based proposals submitted for public comment, the Commission inquires whether the “safe harbor” for wireless carriers should be abolished and how wireless carriers should determine their actual interstate end-user telecommunications revenues. Although these issues are primarily directed at cellular and broadband PCS carriers, the Commission explicitly raises the same issues with respect to paging carriers and analog SMR carriers.

Insofar as the paging industry is concerned, the short answer is that it is impossible to determine actual interstate revenues for one-way paging service; and that the existing “safe harbor” of 12% is a credible proxy for the paging industry as a whole, and is less onerous than the alternatives suggested in the SFNPR. Accordingly, AAPC submits that the existing “safe harbor” should be retained along with the current *de minimis* exemption for carriers whose contribution would be less than \$10,000 annually.

The Commission has been informed repeatedly as to why it is impossible to determine actual interstate revenues for one-way paging service. Paging carriers generally cannot collect data concerning where a paging call originates or where it is received by a customer, and charges for paging service typically are undifferentiated monthly flat rates, which include both intrastate and interstate service.¹ Therefore, interstate revenues can only be estimated for USF contribution purposes, a fact which the Commission has implicitly acknowledged from virtually the beginning of the USF program.²

Nothing has changed which would warrant any different conclusion at this time. Nor has the Commission identified any other development relevant to the paging industry which might render the current structure outmoded or otherwise contrary to the public interest. Therefore, there is no basis whatsoever for now abolishing the current “safe harbor” of 12% for paging carriers or the companion *de minimis* exemption for carriers who would contribute less than \$10,000 annually.³

2. The Connection-Based Proposals Should Not Be Adopted
for the Paging Industry

AAPC does not oppose a connection-based USF contribution system *per se*, and it has argued that a USF contribution based upon a flat, per pager charge could be a useful and desirable modification of the USF contribution structure, if implemented properly.⁴ However, doing

¹ E.g., Comments of American Association of Paging Carriers on Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service, et al.*, CC Docket Nos. 96-45, et al., at pp. 3-4 (April 22, 2002) (“AAPC Comments”); Advanced Paging, Inc., et al., Joint Comments in Response to Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at pp. 3-4 (January 11, 1999) (the “Joint Comments”).

² *Federal-State Joint Board on Universal Service (Memorandum Opinion and Order and Further Notice of Proposed Rulemaking)*, 13 FCC Rcd 21252, 21258-59 (FCC 1998).

³ In fact, as AAPC has argued repeatedly, a 12% interstate allocation actually is excessive. See, e.g., AAPC Ex Parte Presentation, CC Docket Nos. 96-45 et al., November 25, 2002. AAPC recognizes, however, that the existence of the “safe harbor” *vel non*, rather than its precise level, is the issue in this phase of the proceeding.

⁴ AAPC Comments, *supra*.

so, AAPC has made clear, means translating *current* contribution levels to corresponding per unit fees, without increasing the relative contribution level for paging carriers.⁵ Unfortunately, none of the proposals do so, and they would impose burdensome additional reporting requirements on the paging industry to boot. Accordingly, AAPC respectfully submits that the proposals are materially flawed and should not be adopted for the paging industry.

As the Commission has recognized, the current USF contribution level for the paging industry translates into a contribution of approximately \$0.07 per pager per month.⁶ According to the SFNPR, however, that contribution would increase to \$0.10 per one-way pager per month under Proposal 1 (SFNPR at ¶75), an increase of *43 percent*. The proposed contribution levels by paging carriers under Proposals 2 and 3 are not specified in the SFNPR, but there is every reason to believe from the Commission's discussion that they would be at least as great as, if not more than, under Proposal 1. Accordingly, for the same reasons explained by AAPC last year in response to the FNPR herein, such increases would be nothing more than contributions based in substantial part on paging carriers' *intrastate* revenues. Such a contribution, of course, would be explicitly contrary to the Fifth Circuit's determination that the Act prohibits the inclusion of intrastate revenues in the calculation of universal service contributions.⁷

Moreover, implicit in AAPC's willingness in principle to consider a connection-based proposal was the expectation that the reporting requirements for paging carriers thereby would be simplified. Unfortunately, in the case of the three proposals in the SFNPR, reporting re-

⁵ *Id.* at *e.g.*, p. 10.

⁶ *Federal-State Joint Board on Universal Service, et al. (Further Notice of Proposed Rulemaking and Report and Order)*, CC Docket Nos. 96-45, et al., FCC 02-43, published at 67 Fed. Reg. 11268 (FCC 2002) (the "FNPR"), at ¶59 & n. 145.

⁷ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 446-448 (5th Cir. 1999), cert. den. 2000 WL 684656 (S. Ct. May 30, 2000).

quirements would become *more* burdensome, not less. This is so because paging carriers would still be required to compute and report interstate revenues for purposes of calculating contributions to the Telecommunications Relay Service, Numbering Administration and Local Number Portability (SFNPR at ¶77), in addition, of course, to computing and reporting units in service for purposes of calculating USF contributions.

Under these circumstances, there would be no discernible benefit to the paging industry from adopting any of the proposed connection-based contribution methodologies. Quite to the contrary, it appears that under all of them the industry's required contribution would be improperly increased and its reporting requirements would become more burdensome. Accordingly, the proposals are materially flawed and should not be imposed on the paging industry.

Finally, AAPC notes that the Commission's discussion in the SFNPR appears to proceed on the assumption that it must impose either a connection-based methodology or a revenue-based methodology on all industry segments across the board. However, there is no apparent reason why this should be so. Section 254(d) of the Act requires that USF contributions be "equitable and nondiscriminatory," but it does not require that the structure be the same for all industry segments.

In establishing annual regulatory fees, the Commission uses different methodologies for different industry segments, for example, assessing some on a revenue basis, others on a per unit basis, and still others on a per call sign basis. If recent developments in the wireline industry sector point to overhauling the contribution structure for that segment of the industry, that fact does not, in AAPC's view, justify overhauling the structure for other segments which are not similarly situated and for which the change provides no benefit. In short, if the Commission finds it in the public interest to adopt any of the proposed connection-based methodologies, by reason of developments in particular industry segments, it should adopt such methodologies *only*

for those industry segments and should leave unchanged those industry segments, such as the paging industry, for which a connection-based contribution methodology provides no benefit.

Conclusion

The connection-based methodologies proposed in the SFNPR should not be imposed on the paging industry, because they would improperly increase the relative contributions by the paging industry – likely substantially -- for reasons wholly unrelated to any recent developments in that industry. Additionally, the proposals would increase the reporting burdens for paging carriers, not lessen them. There is no evident reason why all industry segments must have the same contribution methodology, so long as the end result is “equitable and nondiscriminatory” contributions. The revenue-based system now in effect has passed that test in the Commission’s view; the proposed connection-based methodologies plainly would not. Therefore, if the Commission finds that a connection-based methodology is warranted by industry developments in other segments, it should adopt such methodology only for such segments and should not make changes where there is no demonstrable benefit for doing so.

Respectfully submitted,

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